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# UNCLAIMED PROPERTY-A POTENTIAL SOURCE OF NON-TAX REVENUE

## I. INTRODUCTION

All states have statutes providing for the escheat of property, at least in the situation where the owner dies intestate with no heirs.<sup>1</sup> Most states have enacted more complete legislation in the area of escheat, establishing procedures whereby the disposition of various items of unclaimed and abandoned property may be governed by the state.<sup>2</sup> Such statutory provisions, frequently referred to as "escheat" statutes, are primarily derived from two ancient doctrines, escheat and *bona vacantia*.<sup>3</sup>

The concept of escheat can be traced to the twelfth century and was an incident of tenure under the feudal system. If upon the death of a fee owner of land there was no heir capable of performing the services of tenure, the land reverted to the mesne lord. In the absence of a mesne lord, or if the land was held directly from the Crown, the land reverted immediately to the Crown as ultimate owner.<sup>4</sup> This reversion of land upon the disruption of tenure was referred to as escheat.

Although only real property was subject to escheat, certain items of personalty also could be taken under the doctrine of *bona vacantia* whereby the Crown took items of personal property not as ultimate owner, but rather for the sole reason that there was no other owner. The claim of the Crown was thought to be superior to that of a stranger and therefore had the effect of eliminating conflict among private claimants. *Bona vacantia* was not applicable to all items of unclaimed personalty; to many such items a finder's claim was good against all except the true owner.<sup>5</sup>

Modern statutes typically combine the theories of escheat and *bona vacantia* and are applicable to both real and personal property.<sup>6</sup> Although

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1. Garrison, *Escheats, Abandoned Property Acts, and their Revenue Aspects*, 35 Ky. L.J. 302, 304 (1947). Missouri's escheat statute for property of a decedent is found in RSMo § 470.010 (1978).

2. See, e.g., Garrison, *supra* note 1, at 304; Comment, *Escheat of Corporate Intangibles: Will the State of the Stockholder's Last Known Address be Able to Enforce Its Right?*, 41 NOTRE DAME LAW. 559, 560 (1966); Comment, *A Survey of State Abandoned or Unclaimed Property Statutes*, 9 St. Louis U.L.J. 85, 85 (1964). See also note 13 *infra*.

3. See Garrison, *supra* note 1, at 303; Note, *Origins and Development of Modern Escheat*, 61 COLUM. L. REV. 1319, 1326-27 (1961); Comment, 41 NOTRE DAME LAW., *supra* note 2, at 560.

4. See Comment, 41 NOTRE DAME LAW., *supra* note 2, at 559. See generally 30A C.J.S. *Escheat* § 1 (1965).

5. See generally authorities cited note 3 *supra*. The right under which the Crown claimed title was referred to as "title by occupancy."

6. See Garrison, *supra* note 1, at 304; Comment, 41 NOTRE DAME LAW., *supra* note 2, at 560; Comment, 9 St. Louis U.L.J., *supra* note 2, at 85.

not true escheat provisions in the historical sense of the word, these statutes are commonly referred to as such, and the term escheat is now used to describe the transfer of custody or title to the state. Modern escheat legislation generally falls into one of two basic patterns.<sup>7</sup> The first type of provision closely resembles a true escheat: title to the property vests in the state after the expiration of a definite period of time. Once title has vested, the true owner's claim is barred.<sup>8</sup> Under the second type of provision, the owner's claim is never barred. These custodial acts simply give the state possession and use of the property so long as it remains unclaimed. "The true owner, his heirs, or his assigns can claim it at any time."<sup>9</sup> The most comprehensive act governing the disposition of unclaimed property, the Uniform Disposition of Unclaimed Property Act (Uniform Act), is custodial in nature.<sup>10</sup>

## II. THE UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT

The purpose of this Comment is to encourage the adoption of the Uniform Act by the state of Missouri. It will deal primarily with the provisions of the Uniform Act and the problems encountered thereunder, and the advantages obtained by an adopting state.

A number of considerations prompted the development of the Uniform Act in 1954 and continue to support its adoption. The Uniform Act has three objectives: to protect unknown owners of property by locating them whenever possible and restoring their property; to prevent unjust enrichment of holders of unclaimed property while relieving them of further annoyance, expense, and liability; and to give to the state the benefit of revenues generated by such property while it remains unclaimed.<sup>11</sup>

### A. Revenue Generated Under the Uniform Act

The amount of revenue generated by passage of a comprehensive escheat act has been substantial in a number of states, particularly during the first few years subsequent to enactment. For example, in New Jersey, which had adopted legislation prior to approval of the Uniform Act, the amount collected during the first year alone was approximately \$1,175,000. In New York, another highly industrialized state, \$38,500,000 was collected in the first thirteen years following enactment of comprehensive escheat

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7. Comment, 41 NOTRE DAME LAW., *supra* note 2, at 560.

8. Note, *Modern Rationales of Escheat*, 112 U. PA. L. REV. 95 (1963). For an example of such legislation, see N.J. STAT. ANN. § 2A:37-29 (West Supp. 1978).

9. Comment, 41 NOTRE DAME LAW., *supra* note 2, at 560.

10. UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT, Commissioners' Prefatory Note (1954 Version). This Act can be found in 8 UNIFORM LAWS ANNOTATED 81 (1972).

11. UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT, Commissioners' Prefatory Note (1954 Version). See, e.g., *State v. Pacific Far East Line, Inc.*, 261 Cal. App. 2d 609, 68 Cal. Rptr. 67 (1968); *In re Monks Club, Inc.*, 64 Wash. 2d 845, 394 P.2d 804 (1964).

legislation. Michigan collected \$2,500,000 in its first year alone, and Pennsylvania collected \$5,000,000 in the first seven years of operation.<sup>12</sup> The experience of states has varied, but the financial benefit has proved substantial as evidenced by the widespread adoption of such legislation.<sup>13</sup>

Missouri now is almost surrounded by states which have some type of comprehensive escheat legislation. Arkansas and Tennessee, upon adoption of the Uniform Act in 1978, became the last of forty-six states which have adopted some form of comprehensive escheat legislation.<sup>14</sup> Of the states which border Missouri, only Kansas has not yet adopted comprehensive legislation.<sup>15</sup>

### B. *Avoiding the Threat of Multiple Liability*

Although the revenue aspect admittedly has been the strongest motivation for adoption of the Uniform Act, it was only one of several reasons for its development. Probably the strongest impetus for the development of the Uniform Act was the threat of multiple liability. This threat was present because the holder of unclaimed intangible property was potentially subject to the jurisdiction of more than one state.<sup>16</sup>

The prospect of multiple liability was suggested by two United States Supreme Court decisions,<sup>17</sup> the last of which was decided only three years prior to the approval of the Uniform Act.<sup>18</sup> In *Connecticut Mutual Insurance Co. v. Moore*,<sup>19</sup> the state of New York was allowed to take custody of unclaimed funds due on insurance policies issued to persons residing in New York, even though the insurance company was

12. Examples of revenues generated under the Uniform Act are found in McBride, *Unclaimed Dividends, Escheat Statutes and the Corporation Lawyer*, 14 BUS. LAW. 1062, 1066 (1959).

13. To date, 46 states have adopted comprehensive legislation in this area. Thirty-three have adopted some version of the Uniform Act; the others, Alaska, Connecticut, Delaware, Kentucky, Massachusetts, Michigan, Mississippi, New Jersey, New York, North Carolina, Pennsylvania, Texas, and Wyoming, have adopted legislation not patterned after the Uniform Act. States which have not yet adopted comprehensive legislation are Colorado, Kansas, Missouri, and Ohio. Ohio does have more provisions for escheat of unclaimed property than does Missouri, but these provisions are scattered throughout its code and are not as complete as those in other states which have adopted comprehensive legislation.

14. ARK. STAT. ANN. §§ 50-620 to -647 (Supp. 1979); TENN. CODE ANN. §§ 64-2901 to -2932 (Supp. 1979). While Arkansas was one of the first 10 states to adopt comprehensive legislation in the area of escheat, in 1978 the Uniform Act was adopted to replace the state's prior provisions.

15. See ARK. STAT. ANN. §§ 50-620 to -647 (Supp. 1979); ILL. ANN. STAT. ch. 141, §§ 101-130 (Smith-Hurd 1964 & Supp. 1979); IOWA CODE §§ 556.1-.36 (1978); KY. REV. STAT. §§ 393.010-.250 (1978); NEB. REV. STAT. §§ 69-1301 to -1329 (1978); OKLA. STAT. tit. 60, §§ 651-687 (1979); TENN. CODE ANN. §§ 64-2901 to -2932 (1978).

16. UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT § 10, Commissioners' Note (1954 Version).

17. See *Standard Oil Co. v. New Jersey*, 341 U.S. 428 (1951); *Connecticut Mut. Ins. Co. v. Moore*, 333 U.S. 541 (1948).

18. The Uniform Act was first approved in 1954 and was revised in 1966.

19. 333 U.S. 541 (1948).

domiciled in another state.<sup>20</sup> The transaction of business within New York was held to provide a satisfactory basis for its jurisdiction.<sup>21</sup> Justice Jackson, in a strong dissent, criticized the majority for its failure to consider the potential conflicts which could result. He listed numerous other states which could establish jurisdiction and attempt to escheat the same property.<sup>22</sup> In *Standard Oil Co. v. New Jersey*,<sup>23</sup> the threat of multiple liability posited by Justice Jackson became a reality. The Court sustained the power of the state of corporate domicile, New Jersey, to escheat unclaimed intangible property belonging to persons whose last known address was in New York.<sup>24</sup> The Court again refused to address the issue of multiple liability, stating that the conflict was not before the Court.<sup>25</sup> It indicated, however, that the full faith and credit clause of the United States Constitution would bar any such double liability.<sup>26</sup> Thus began the "race of diligence," whereby each state rushed to be first to escheat, hoping to bar later claimants and secure the revenue for itself.<sup>27</sup> These threats of multiple liability and the necessity for a "race of diligence" prompted the formation of a committee to draft a uniform

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20. *Id.* at 549. "Domicile" is a term which has been given a number of meanings in our legal system. As used by the courts in the area of escheat, however, it apparently refers to the state in which the corporation is organized. See *Pennsylvania v. New York*, 407 U.S. 206, 218 (1972).

21. 333 U.S. at 551. The Court found that the obligations were created through acts done within the state under the protection of New York law and that sufficient contacts were established to justify seizure of the unclaimed property.

22. *Id.* at 556. (Jackson, J., dissenting). Justice Jackson further stated: If we say that New York may step into the beneficiary's shoes and collect his unclaimed insurance proceeds solely because the insured lived in New York when the policy issued for delivery there, how can we deny the claim of another state to escheat the same fund when its claim is asserted under any one or more of the following circumstances: (1) It is the state in which the insured has died. . . . (2) It is the state in which the beneficiary has resided and was last known to reside. (3) It is the state of a proved later and longer residence of the insured. (4) It is the state to which both the insured and the beneficiary removed and resided after the policy was taken out in New York. (5) It is the state of actual permanent domicile, as opposed to mere residence in New York, of the insured and the beneficiary. (6) It is the state of actual delivery of the policy. . . . (7) It is the state where the claim is payable and where the funds for its discharge are and at all times have been located.

*Id.* at 558-59 (Jackson, J., dissenting).

23. 341 U.S. 428 (1951).

24. *Id.* at 441.

25. *Id.* at 443.

26. *Id.* As the Court later determined in the case of *Western Union Tel. Co. v. Pennsylvania*, 368 U.S. 71 (1961), however, the full faith and credit clause is not always an effective barrier to multiple liability. A state court judgment need not be given full faith and credit as to property or parties not subject to the jurisdiction of that court. Other states, who assert a claim to the same property and are not subject to the earlier court's jurisdiction are not barred.

27. UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT, Prefatory Comment (1966).

act. The goal was to dispose of these problems in a just and orderly manner and to provide guidelines to holders faced with conflicting claims.<sup>28</sup>

### III. SUBSTANTIVE SECTIONS OF THE UNIFORM ACT

While the Uniform Act is composed of thirty-two sections, only the more important substantive provisions will be discussed in this Comment.<sup>29</sup> The major objections to the Uniform Act which have been encountered by states which have adopted it and the manner in which the courts have dealt with these objections also will be discussed, as will remaining problems which the adopting state might remedy by modifying the Uniform Act. Existing Missouri legislation pertaining to a particular section of the Uniform Act will be dealt with in conjunction with that section.

Section two of the Uniform Act establishes criteria under which deposits made with banking organizations, funds paid toward shares in financial organizations other than banks, other forms of obligations of both banks and financial organizations, and the contents of safe deposit boxes may be presumed abandoned. The acts of deposit and payment must be performed within the state, safe deposit boxes must be located within the state, and any written instrument on which a bank or financial organization or business association is directly obligated must have been issued within the state.<sup>30</sup> In addition, seven years must have elapsed with no indication by the owner of any interest in the property.<sup>31</sup> In a case

28. *Id.* In 1961 the problem of multiple liability of a holder subject to the jurisdiction of more than one state finally was adjudicated by the Supreme Court. Acknowledging that the full faith and credit clause would not effectively bar multiple escheat, the Court terminated the threat of multiple liability on due process grounds. *See Western Union Tel. Co. v. Pennsylvania*, 368 U.S. 71 (1961). Not until 1965, however, did the Court end the "race of diligence" by establishing priority rules among the various claimants. *See Texas v. New Jersey*, 379 U.S. 674 (1965).

29. For two informative articles on procedures which should be utilized by corporate holders of unclaimed property attempting to comply with the Uniform Act, see Ely, *Escheats: Perils and Precautions*, 15 BUS. LAW. 791 (1960); McBride, *supra* note 12, at 1062.

30. UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT § 2 (1954 Version). The requirement that all events take place within the state serves as a basis on which to claim jurisdiction, and also makes it more convenient for all parties involved. For a discussion of the problems in obtaining jurisdiction, see text accompanying notes 60-66 *infra*.

31. UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT § 2 (1954 Version). This section does not require the property to be owed to a resident of the state. Under the Uniform Act, property owed to a nonresident may be claimed unless the state of residence has enacted a reciprocal provision similar to § 10 of the Uniform Act. *See* text accompanying notes 51 & 52 *infra*. *Texas v. New Jersey*, 379 U.S. 674 (1965), however, impacts upon this provision. That decision may be interpreted to allow *only* the state of last known address to escheat property if that state has an escheat provision applicable thereto, whether or not it has a reciprocal provision. To safeguard against differences in interpretation, an adopting state would be wise to amend the Uniform Act to that effect. Thus, the state could only claim property owed to a nonresident if (1) that state were the state

which illustrates the breadth of this section, the state of Oregon sued the Multnomah Kennel Club to escheat sums retained by the club to pay winning wagerers who had failed to collect.<sup>32</sup> The section was applicable to such an organization, but the required seven years had not yet elapsed. The written instruments were found not to be "payable," *i.e.*, due, until the winning tickets were presented; only then would the seven year period commence. Missouri has a statute providing for the escheat of unclaimed sums upon the statutory liquidation of a banking organization,<sup>33</sup> but unclaimed funds held by solvent banks, as well as funds held by other financial organizations, apparently are unaffected by the statute.<sup>34</sup>

Abandonment of life insurance funds owing to one whose last known address is within the state is dealt with in section three of the Uniform Act. The state of incorporation and principal place of business are ignored as potential bases for jurisdiction because their use would result in a few states receiving most of the funds regardless of the last known address of those entitled to them.<sup>35</sup> Life insurance policies are deemed to be matured if in force when the insured has "attained the limiting age under the mortality table on which the reserve is based."<sup>36</sup> For instance, if the limiting age were 70 and the insured, if living, would have reached that age by 1970, the funds could be escheated by the state of his last known address after 1977. This assumes that the insured cannot be located and has not corresponded with the company during those seven years. Missouri's statute concerning the escheat of insurance funds accumulated pending rate determinations was repealed in 1972.<sup>37</sup>

Section four of the Uniform Act specifies that deposits made with a utility company which does business within the state to secure payment for services to be furnished within the state are abandoned if unclaimed within seven years of the termination of service. Any refunds the company is required to make for overcharges also are presumed abandoned after

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of domicile of the corporation, and (2) the state of residence had no escheat provision or there was no last known address of the owner.

32. *Oregon Racing Comm'n v. Multnomah Kennel Club*, 242 Or. 572, 411 P.2d 63 (1966).

33. RSMo § 361.210 (1978).

34. *Id.* This statute was interpreted in *Jones v. Fidelity Nat'l Bank & Trust Co.*, 362 Mo. 712, 243 S.W.2d 970 (En Banc 1951).

35. See UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT § 3, Commissioners' Note (1966). Under this provision the state of incorporation is not allowed to claim the funds payable to an owner who is the resident of another state even if that other state has no escheat provision. In this respect, the standard established by *Texas v. New Jersey* is broader, allowing such escheat so long as the state is the state of corporate domicile and there is no address of record or the state of last known address has no escheat provision.

36. UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT § 3 (1954 Version).

37. 1941 Mo. Laws 396, § 5985a (formerly codified as RSMo § 379.395, repealed 1972). In many instances, however, RSMo § 470.270 (1978), which deals with property involved in or resulting from litigation, would provide a basis on which to escheat such funds.

seven years.<sup>38</sup> Unless the services as to which a refund was ordered or a deposit made were rendered within the state, a state cannot assert custody rights under the Uniform Act.<sup>39</sup> The only Missouri statute relevant to the abandonment of property by utility customers is a general statute dealing with property involved in or resulting from litigation.<sup>40</sup> Although this statute may reach those instances where a rebate is ordered by the court in a judicial proceeding, utility deposits and other refunds are not made subject to escheat.

Section five of the Uniform Act, which pertains to "any stock or other certificate of ownership, or any dividend, profit, distribution, interest, payment on principal, or other sum held or owing by a business association," provides two bases of jurisdiction. Such property is subject to the jurisdiction of the state (1) if held by a business association organized under the laws of the state, or (2) if held by a business association doing business in the state and if the last known address of the owner is within the state.<sup>41</sup> As with banking deposits under section two, the reciprocal provision provided by section ten comes into play. If the corporate holder is incorporated under Missouri law but the last known address of the owner is in another state which has enacted a reciprocal provision, the "dual standard is resolved into the single standard of the last known address of the owner."<sup>42</sup> The Supreme Court decision in *Texas v. New Jersey*<sup>43</sup> would have the effect of denying the state's escheat of property based upon the domicile of the holder if there is an owner whose last known address is in another state which has an applicable escheat provision.

Under section five, the statutory period which must elapse before abandonment is presumed is seven years, and the owner must not have corresponded with the holder within that period of time. Missouri currently has no escheat provision which would govern the items covered by this section. The result is that such property is subject to escheat by another state which is the domicile of the corporation even if the last known address of the owner is within Missouri.<sup>44</sup> For example, assume

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38. Consideration should be given to possible modification of this type of provision because of the costs to the utility company of publishing notice, keeping records for long periods of time, and other administrative burdens. Perhaps a better alternative would be to provide that there is no need to publish the names of owners if the property involved is worth less than \$25. Such a provision was upheld in *State v. American-Hawaiian S.S. Co.*, 29 N.J. Super. 116, 101 A.2d 598 (Ch. Div. 1953). But see *Clovis Nat'l Bank v. Callaway*, 69 N.M. 119, 126, 364 P.2d 748, 752 (1961).

39. The *Texas v. New Jersey* standard would allow escheat if the state of last known address had no applicable escheat statute. See note 31 *supra*.

40. RSMo § 470.270 (1978).

41. The term "business association" has been held to include a nonprofit corporation. *In re Monks Club, Inc.*, 64 Wash. 2d 845, 394 P.2d 804 (1964).

42. Comment, 9 Sr. Louis U.L.J., *supra* note 2, at 91.

43. 379 U.S. 674 (1965).

44. *Texas v. New Jersey*, 379 U.S. 674 (1965).



that a Missouri resident worked for a company incorporated in Iowa. He quit work and left without claiming his last month's wages. Even though his last known address is in Missouri, because Missouri has no applicable escheat provision Iowa can escheat the sum owed after seven years have elapsed. Considering the large number of Missouri residents employed outside the state, this could mean a substantial loss of revenue. By reincorporating in Missouri within the seven-year period, the company could avoid escheat in either state and be able to retain the money. So long as the reincorporation took place before the necessary time period had elapsed under Iowa law, the property would not be subject to escheat by that state, and Missouri has no applicable provision.

Section six specifies that unclaimed intangible property which is distributable upon the dissolution of a business association, banking organization, or financial organization organized under the laws of or created in the state, is presumed abandoned after two years. Missouri has two statutes which might achieve the same result in certain instances. Under Mo. Rev. Stat. section 361.210, similar treatment is afforded unclaimed property following the liquidation of a bank or trust company. Mo. Rev. Stat. section 470.010 also might apply should the dissolution of any type of corporation be achieved by means of an assignment for the benefit of creditors or the appointment of a receiver. The Missouri provisions again fail to cover all the situations which might arise. For example, a statutory dissolution of a non-banking corporation would not be covered.

Section seven of the Uniform Act provides that all intangible property and any income thereon which are held in a fiduciary capacity are presumed abandoned if the owner has not dealt in some way with the property or income or indicated an interest therein within seven years after they became payable or distributable. The property must be held by (1) a banking or financial organization, or by a business association organized under the laws of or created in the state; (2) a foreign business doing business within the state; or (3) any other person if it is held in the state.<sup>45</sup> Again, section ten would be applicable if the other state involved had a provision for reciprocity.<sup>46</sup> Missouri has no statute similar to section seven.

Under section eight, all intangible property held by any court, public corporation, public authority, or public officer of either the state or a political subdivision thereof, is presumed abandoned if it has remained unclaimed for more than seven years.<sup>47</sup> Escheat would seem to be allowed regardless of the last known address of the owner.<sup>48</sup>

A catchall provision was added to the Uniform Act in section nine.

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45. UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT § 7 (1954 Version).

46. Comment, 9 ST. LOUIS U.L.J., *supra* note 2, at 91.

47. Minnesota amended this provision to exclude property of those held in public correctional institutions. MINN. STAT. ANN. § 345.28 (West 1969).

48. Comment, 9 ST. LOUIS U.L.J., *supra* note 2, at 91. *Texas v. New Jersey* may impact upon this provision if the state of last known address has an applicable escheat provision.

This section covers all intangible property not otherwise covered which is held and owing in the state in the ordinary course of the holder's business. The Commissioners' Note to section nine stresses that the property must be held in the "ordinary course of the holder's business within this state," and lists several examples of items embraced by this section. The items listed include:

amounts due and payable under the terms of insurance policies not covered by section 4, pension trust agreements, profit-sharing plans, credit balances on paid wages, security deposits, refunds, funds deposited to redeem stocks, bonds, coupons and other securities, or to make a distribution thereof, together with any interest or increment thereon.<sup>49</sup>

Again, abandonment is presumed if such property is unclaimed for more than seven years after becoming payable or distributable.<sup>50</sup>

The most important provision of the Uniform Act as it relates to the elimination of multiple liability is section ten. The Commissioners' Note accompanying that section provides that "if two states, each having contact with the transaction, have each adopted the Act, the jurisdictional test becomes the last known address of the owner." As previously indicated, at the time the Uniform Act was drafted the United States Supreme Court had taken no stand concerning multiple liability of holders of intangible property who were subject to the jurisdiction of more than one state.<sup>51</sup> The decision of *Texas v. New Jersey*,<sup>52</sup> however, makes the section less significant today.

The remaining sections of the Uniform Act set forth such procedural requirements as when to report the holding of any unclaimed property,<sup>53</sup>

49. UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT § 9, Commissioners' Note (1966). Many states have modified this list in their versions of the Act. See, e.g., N.M. STAT. ANN. § 22-22-10 (1975).

50. This catchall provision indicates the intent of the drafters to subject virtually all types of property to escheat by the adopting state. The experience in the various states has demonstrated their willingness to fulfill such an intent, and is reflected by the variety of items they have escheated thus far. See *In re Moneys Deposited*, 41 F. Supp. 792 (E.D. Pa. 1941) (bribe money offered a public official); *State v. Pacific Far East Line, Inc.*, 261 Cal. App. 2d 609, 68 Cal. Rptr. 67 (1968) (uncollected wages of seamen); *State v. U.S. Steel Co.*, 12 N.J. 51, 95 A.2d 740 (1953) (unredeemed cafeteria coupons); *State ex rel. Mallicoat v. Coe*, 254 Or. 365, 460 P.2d 357 (1969) (school redemption bonds); *Commonwealth v. Binestock*, 366 Pa. 519, 77 A.2d 628 (1951) (uncollected condemnation awards). States also have claimed: tax refunds, vacant cemetery lots, witness and juror fees, money orders and travelers' checks, and things received in the course of business by pawnbrokers, cleaners, and express companies. See *Lake, Escheat, Federalism and State Boundaries*, 24 OHIO ST. L.J. 322, 326 (1963); Note, 61 COLUM. L. REV., *supra* note 3, at 1332-36. The state of New Jersey unsuccessfully attempted to escheat the estimated dollar amount of issued but unredeemed S & H Green Stamps. *State v. Sperry & Hutchison Co.*, 23 N.J. 38, 127 A.2d 169 (1956).

51. See text accompanying notes 17-25 *supra*.

52. 379 U.S. 674 (1965).

53. UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT § 11 (1954 Version).

the notice which is to be given,<sup>54</sup> the manner in which the state must handle the property,<sup>55</sup> and how the true owner may file a claim.<sup>56</sup> As indicated in the commissioners' notes immediately following each section of the Act, many of these provisions have been modified by the various states which have adopted the Uniform Act in order to have the Act conform with time periods established by prior state escheat provisions or with state fiscal provisions,<sup>57</sup> and some change may be necessary in Missouri. The need to modify particular sections will be shown in the following discussion of some problem areas encountered under the Act and some possible solutions to these problems.

#### IV. CHALLENGES TO VALIDITY

The Uniform Act has been challenged on a number of grounds. Many of the issues raised appear to have been resolved fully. A brief discussion of the primary ones, however, will point out possible challenges to any future legislation in Missouri in this area. A number of problems not yet resolved fully also will be presented and suggestions made as to their possible solution.

##### A. *Impairment of Contract*

A primary objection interposed by those parties seeking to prevent enforcement of the Uniform Act and similar escheat statutes has been that of impairment of contract under article I, section 10 of the United States Constitution.<sup>58</sup> The contention is that the statute transforms a conditional obligation into a liquidated obligation, contrary to any provision in the contract between obligor and obligee. This argument has been uniformly rejected by the courts.<sup>59</sup> The state is acting merely as a conservator of the property, not as a party to the contract. Because there is usually no contract between the obligor and obligee as to disposition of the property if the owner should fail to assert his claim, no contract is impaired. The obligee still is entitled to assert his claim against the state; there is merely a change in remedy for him. As for the obligor, if the state to which he relinquished the property was lawfully entitled to demand the transfer, he is relieved of further liability.

54. *Id.* § 12.

55. *Id.* §§ 17-18.

56. *Id.* §§ 19-21.

57. Although various states have modified these procedural provisions, the basic format is as follows: (1) filing of a report by the holder by a specified date; (2) publication of notice to the owner by the state; (3) mailing of notice to the owner's last known address; (4) owner has 65 days in which to claim his property from the holder; (5) twenty days after the time for demand to be made of the holder, holder delivers the property to the proper state official; and (6) sale by the state within one year, with a percentage of the proceeds being retained to meet any claims which might be forthcoming. McBride, *supra* note 12, at 1065.

58. See *Standard Oil Co. v. New Jersey*, 341 U.S. 428 (1951); *Connecticut Mut. Life Ins. Co. v. Moore*, 333 U.S. 541 (1948); *Anderson Nat'l Bank v. Lockett*, 321 U.S. 233 (1944); *Security Sav. Bank v. California*, 263 U.S. 282 (1923).

59. See, e.g., cases cited note 58 *supra*.

### B. Jurisdiction

A second ground on which attempts to escheat property have been challenged is that of lack of jurisdiction.<sup>60</sup> Escheat at common law represents the reversionary interest or right of the lord to take for want of a tenant; it was applicable only to property which could be the subject of tenure. It gradually has extended to include both tangible and intangible personal property.<sup>61</sup> As to real and tangible personal property, the challenge of lack of jurisdiction seldom arises. Generally the res must have its situs within a state in order for that state to have escheat jurisdiction.<sup>62</sup> With respect to unclaimed intangible property, on the other hand, the question of escheat jurisdiction has been unclear.

Early Supreme Court cases were decided on the basis of the "minimum contacts" standard.<sup>63</sup> The result was that a number of states could establish jurisdiction as to the same property. The Court attempted to preclude multiple liability of the holder of the property by stating that the full faith and credit clause of the Constitution was applicable.<sup>64</sup> In *Western Union Telegraph Co. v. Pennsylvania*,<sup>65</sup> however, the Court acknowledged that the clause would not always be an effective bar to multiple liability.<sup>66</sup> In fact, the Court precluded that possibility by holding that a second payment could not be demanded by another state because doing so would deprive the holder of substantive due process.<sup>67</sup> The Court held that any conflicts among the states must be settled in a court where all the states could present their claims for a binding determination, and that the Supreme Court had original jurisdiction to make such a determination.<sup>68</sup> In *Texas v. New Jersey*, the question finally was decided. If the state of the last known address of the owner has an applicable escheat provision, it is the only state which can escheat the property. If it has no applicable escheat provision or if no last known address is of record, the state of corporate domicile may escheat the property.<sup>69</sup>

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60. *Connecticut Mut. Life Ins. Co. v. Moore*, 333 U.S. 541 (1948); *Security Sav. Bank v. California*, 263 U.S. 282 (1923).

61. 27 AM. JUR. 2d *Escheat* § 5 (1966).

62. *Id.* § 4.

63. See *Standard Oil Co. v. New Jersey*, 341 U.S. 428, 439 (1951); *Connecticut Mut. Life Ins. Co. v. Moore*, 333 U.S. 541 (1948).

64. *Standard Oil Co. v. New Jersey*, 341 U.S. 428, 443 (1951).

65. 368 U.S. 71 (1961).

66. For an early lower court decision to the same effect, see *Biddy v. Blue Bird Air Serv.*, 374 Ill. 506, 30 N.E.2d 14 (1940).

67. *Western Union Tel. Co. v. Pennsylvania*, 368 U.S. 71, 75 (1961).

68. *Id.* at 77. Cf. *Pennsylvania v. Kervick*, 60 N.J. 289, 288 A.2d 289 (1972). One state still may sue in another's state court for the purposes of escheat. If a state does so, it "lays aside its sovereignty," and is to be dealt with as though a private litigant. *Id.* at 297, 288 A.2d at 293.

69. This is the accepted interpretation of the Court's opinion in *Texas v. New Jersey*, and appears to be in accordance with the analysis used therein, as well as with most statutory provisions then in effect. In *State v. Texas Elec. Serv. Co.*, 488 S.W.2d 878 (Tex. Civ. App. 1972), however, the Texas court placed the following interesting interpretation on the case:

The decision in *Texas v. New Jersey* resolved a major problem facing states with conflicting claims to the same property. Probably the largest problem confronting those states, however, was engendered by that decision. If the *only* state which can escheat unclaimed intangible property is the state of the owner's last known address, and the holder of the property is located elsewhere, can the state of last known address compel the holder to report such property? If so, can it bring suit in its own court system to compel the transfer of such property?<sup>70</sup> Unless the state has some practical means of enforcement, a corporation is unlikely to comply with a state law requiring the transfer of such property or to volunteer information as to any unclaimed property it might hold.

If the corporate holder of unclaimed property has sufficient contacts with the state of last known address to satisfy the jurisdictional test established by *International Shoe Co. v. Washington*,<sup>71</sup> the state probably can enforce its right to obtain the information.<sup>72</sup> On the other hand, where the corporation is incorporated elsewhere, does its business elsewhere, and has its principal place of business outside the state, it seems unlikely that the state can establish sufficient jurisdiction to regulate the corporation on the sole basis that one of its shareholders lives there.<sup>73</sup> To solve the reporting dilemma, a legislature could amend sections ten and eleven of the Uniform Act to provide that corporations incorporated in that state report *all* unclaimed property which would be subject to escheat by *any* state. This would be effective if all states had an escheat provision similar to that of the state of regulation. Each state should then have a provision for the exchange of information concerning property which is subject to escheat by other states.<sup>74</sup>

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Under the rule laid down in *Texas v. New Jersey* the state of appellee's corporate domicile, Texas, is entitled to escheat the dividends in question and hold them until such time as it may be shown that the state of last known address has a law providing for their escheat. At that time they would go to that state. . . . *Texas v. New Jersey* requires the state of last known address to make claim against the state of corporate domicile for the dividends in question.

*Id.* at 882. At first glance this construction appears contrary to the spirit of *Texas v. New Jersey*. The state which is first to escheat would do so without regard to the last known address of the owner, and only by litigation would the state of last known address gain the property. If the state of last known address should fail to assert its claim, the earlier state would remain in possession of the property. When one considers the problem to which *Texas v. New Jersey* gave rise, however, the reasoning of the court in *State v. Texas Elec. Serv. Co.* proves useful. It suggests a method by which the state of last known address may enforce its claim against a holder of property who is located outside of that state's jurisdiction. See note 74 *infra*.

70. Comment, 41 NOTRE DAME LAW., *supra* note 2, at 559.

71. 326 U.S. 310 (1945).

72. Comment, 41 NOTRE DAME LAW., *supra* note 2, at 559.

73. *Id.* at 570-78.

74. Oklahoma added a provision to the Uniform Act which authorizes its state officials to make available, on a reciprocal basis, information with respect to property reported under the terms of its legislation which appears to be

Even assuming that the state may obtain such information, the question remains whether it then may enforce its right in its own judicial system. Although suit could be brought in the corporation's state of domicile,<sup>75</sup> the expense incurred frequently would outweigh the benefits derived, especially when the amount of property involved is small. Therefore, the state must try to establish the minimum contacts necessary to confer jurisdiction upon its own courts. Location of an agent within the state and conduct of business through use of the mails have been held sufficient to confer jurisdiction in cases where an individual has sought redress.<sup>76</sup> Use of the mails merely to communicate with a shareholder, however, probably is not sufficient to subject a corporation to that state's jurisdiction.<sup>77</sup> It appears that unless the corporation somehow is made subject to the jurisdiction of the claimant state or unless the property is of enough value to justify the use of another forum, the corporation may be able to retain the unclaimed property as a windfall conferred upon it by the reasoning of the Supreme Court in *Texas v. New Jersey*.

### C. Due Process

Escheat statutes also have been challenged on due process grounds. Procedural due process establishes a dual requirement of adequate notice and an opportunity to be heard.<sup>78</sup> Notice provisions such as those of the Uniform Act have been held to fulfill the due process requirements.<sup>79</sup> Personal notice to the holder in conjunction with notice by publication

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subject to escheat as unclaimed property by the laws of other states. It then provides that upon claim and proper proof by the state that the last known address of the owner is within the state and that the property is subject to escheat by the laws of that state, the Oklahoma officials shall surrender to it any property of such owner or proceeds thereof that may have come into its custody under its escheat provisions. OKLA. STAT. tit. 60, §§ 683-684 (1979).

The above-mentioned provisions, in conjunction with the reasoning of the court in *State v. Texas Elec. Serv. Co.*, 488 S.W.2d 878 (Tex. Civ. App. 1972), could be utilized to solve the problem of enforcement encountered when the state of last known address lacks jurisdiction over the holder of the property. Each state would simply collect and hold all unclaimed property from within its boundaries, subject to proof by another state that it is entitled thereto. Upon such proof, the property would be released to that state. Some provision should be included for the reimbursement of the holding state for any costs it may have incurred in the collection of the property.

75. Comment, 41 NOTRE DAME LAW., *supra* note 2, at 570. The procedure suggested in note 74 *supra* would avoid costly litigation in the courts of the other state by allowing that state to escheat the property initially, and then by providing an administrative procedure whereby the property would be turned over upon proper claim and proof that another state is entitled thereto.

76. *McGee v. International Life Ins. Co.*, 355 U.S. 220 (1957). *But see* *Hanson v. Denckla*, 357 U.S. 235 (1958).

77. *See* *Rush v. Savchuk*, 100 S. Ct. 571, 577 (1980).

78. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

79. *Anderson Nat'l Bank v. Lockett*, 321 U.S. 233, 247 (1944); *Security Sav. Bank v. California*, 263 U.S. 282, 287 (1923); *State v. New Jersey Nat'l Bank & Trust Co.*, 117 N.J. Super. 38, 42, 283 A.2d 543, 547 (Ch. Div. 1971), *modified*, 62 N.J. 50, 298 A.2d 65 (1972); *Clovis Nat'l Bank v. Callaway*, 69 N.M. 119, 127, 364 P.2d 748, 754 (1961).

to the owner has been held to be sufficient.<sup>80</sup> An opportunity to be heard also is provided by the Uniform Act.<sup>81</sup> The owner can later claim his property from the state, which merely takes custody of the property.<sup>82</sup> Under section twenty the state treasurer is to examine all claims filed; he may conduct a hearing and receive evidence concerning such claims.<sup>83</sup> Should the decision of the official prove unsatisfactory, the aggrieved party may file an action in the circuit court to establish his claim.<sup>84</sup>

#### D. Statutes of Limitations

A fourth problem which has confronted the states which have enacted the Uniform Act is engendered by section sixteen, which purports to treat unclaimed property as subject to escheat even if the statute of limitations had run prior to the date on which abandonment is presumed. There are two situations which have arisen under section sixteen, and the manner in which each is resolved is dependent upon the adopting state's interpretation of the effect of its statute of limitations. The first situation concerns property against which the statute of limitations had run prior to the effective date of the Act. The second problem arises when the number of years which must elapse before abandonment is presumed is longer than the applicable statute of limitations.

The effectiveness of section sixteen in both of these situations is dependent upon whether the courts of the adopting state have held that the expiration of the statute of limitations creates a vested property right in the holder. If so, the owner is absolutely barred, and the state cannot escheat the property.<sup>85</sup> Therefore, property against which the statute of limitations has run prior to the effective date of the Act cannot be escheated. There is also a problem as to other property against which the statute has not run on the effective date of the Act, but where the number

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80. *Standard Oil Co. v. New Jersey*, 341 U.S. 428 (1951); *Anderson Nat'l Bank v. Lockett*, 321 U.S. 233 (1944); *Security Sav. Bank v. California*, 263 U.S. 282 (1923); *State v. New Jersey Nat'l Bank & Trust Co.*, 117 N.J. Super. 38, 283 A.2d 543 (Ch. Div. 1971), *modified*, 62 N.J. 50, 298 A.2d 65 (1972); *Clovis Nat'l Bank v. Callaway*, 69 N.M. 119, 364 P.2d 748 (1961). Although some cases have asserted that mere seizure of the property constitutes sufficient notice to the owner, *Anderson Nat'l Bank v. Lockett* implies that some additional action such as publication is necessary. 321 U.S. at 243. *But see* *Corn Exch. Bank v. Coler*, 280 U.S. 218 (1930).

81. UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT §§ 20-21 (1954 Version).

82. *Id.* § 20.

83. *Id.*

84. *Id.* § 21.

85. *Illinois Bell Tel. Co. v. Slattery*, 102 F.2d 58 (7th Cir. 1939); *County Mut. Ins. Co. v. Knight*, 40 Ill. 2d 423, 240 N.E.2d 612 (1968); *Parsons v. Standard Oil Co.*, 5 N.J. 281, 74 A.2d 565 (1950), *aff'd*, 341 U.S. 428 (1951); *Mires v. Hogan*, 79 Okla. 233, 192 P. 811 (1920). *See* Note, *Abandoned Chattels and Intangible Things as a Source of Revenue*, 42 IOWA L. REV. 399, 408 (1957). The United States Supreme Court has held that any attempt to take away a vested right by statute is a violation of due process. States which interpret their statutes of limitations to be vested rights cannot provide for escheat of property against which the period has run. *Stewart v. Keys*, 295 U.S. 403 (1935).

of years which must elapse before abandonment is presumed exceeds the applicable statute of limitations. One approach has been to shorten the period of time required for the presumption of abandonment to arise so that the property can be escheated before the statute of limitations has expired.<sup>86</sup> The other approach has been to amend the applicable statute of limitations so as to make it clear that the expiration of any period of limitations shall not prevent property from being presumed abandoned.<sup>87</sup>

In those states which do not interpret the expiration of the period of limitations as creating a vested property right in the holder, the United States Supreme Court has held that the state may repeal or extend its statute of limitations even after the owner's right of action is barred without violating the fourteenth amendment.<sup>88</sup> Thus, section sixteen is effective in both the situation where the statute has expired prior to the effective date of the Act and in the situation where the period of limitations is shorter than that necessary for the presumption of abandonment.

This difference in interpretation as to the effect of a statute of limitations arguably is the result of the hostility of early courts to such statutes.<sup>89</sup> To strip a statute of its often harsh effects, some courts held that the limitation extinguished only the remedy of direct judicial action and not the underlying right.<sup>90</sup> Those courts were able to find that some action on the part of the defendant waived the bar or revived the remedy.<sup>91</sup> General statutes of limitations came to be regarded as merely procedural, creating no property right in the defendant which would be subject to fourteenth amendment protection.<sup>92</sup> The right of the plaintiff being still in existence, it was property which might be subjected to escheat.<sup>93</sup>

86. *E.g.*, N.J. STAT. ANN. § 2A:37-29 (West Supp. 1978).

87. *E.g.*, CAL. CIV. PROC. CODE § 1515 (West 1979).

88. *Chase Sec. Corp. v. Donaldson*, 325 U.S. 304 (1945); *Campbell v. Holt*, 115 U.S. 620 (1885).

89. *Developments in the Law—Statutes of Limitations*, 63 HARV. L. REV. 1176, 1187 (1950).

90. *Campbell v. Haverhill*, 155 U.S. 610 (1895); *Bomud Co. v. Yockey Oil Co.*, 180 Kan. 109, 299 P.2d 72 (1956); *Stock v. Schloman*, 322 Mo. 1209, 18 S.W.2d 428 (1929).

91. A new promise to pay the debt, an unqualified acknowledgment of the debt, partial payment, or any conduct on the part of a defendant whereby the plaintiff is led not to assert his right to sue, have all been held to "waive" the statute of limitations. *See Shepherd v. Thompson*, 122 U.S. 231 (1887); *Buescher v. Lastar*, 61 Cal. App. 3d 73, 132 Cal. Rptr. 124 (1976); *Chidsey v. Powell*, 91 Mo. 622, 4 S.W. 446 (1887). In *South Carolina Tax Comm'n v. Metropolitan Life Ins. Co.*, 266 S.C. 34, 221 S.E.2d 522 (1975), it was held that where a company typically made payments on policies at the time when claims were presented, regardless of the fact that the statute of limitations had run, it had waived the application of the statute as to policyholders. As a result, the company was not allowed to plead the statute as a bar to an action by the tax commission.

92. *See Chase Sec. Corp. v. Donaldson*, 325 U.S. 304 (1945); *Campbell v. Holt*, 115 U.S. 620 (1885). *See generally Developments in the Law—Statutes of Limitations*, 63 HARV. L. REV. 1176, 1187 (1950).

93. *Evans Prod. Co. v. Fry*, 307 Mich. 506, 12 N.W.2d 448 (1943); *In re Philadelphia Elec. Co.*, 352 Pa. 457, 43 A.2d 116 (1945).



When a statute which created a cause of action in derogation of the common law contained its own limitations, the courts were less lenient toward plaintiffs and sometimes held the limitations to be substantive.<sup>94</sup> The result of such an interpretation was to extinguish completely not only the remedy but the statutory right as well.<sup>95</sup> A later amendment of the period of limitations thus had no effect. Although some cases state that a property right is vested in the defendant which is subject to the protection of the fourteenth amendment,<sup>96</sup> there is perhaps a better analysis of these cases in the context of an escheat provision. At the time the period of limitations expired, the right of the owner no longer existed. Just as the right could not be revived by any subsequent act of the defendant, neither was there anything to be affected by amendment of the period of limitations or to be escheated under an escheat provision. Hence, section sixteen would be ineffective.

Missouri courts have held that no one has a vested right in a statute of limitations.<sup>97</sup> Such statutes are construed as procedural rather than substantive, *i.e.*, they merely suspend the remedy without extinguishing the right.<sup>98</sup> It would seem, therefore, that the state subsequently could amend the period of limitations so as to affect causes of action already barred, but "[r]evival by statute of a right of action already barred is an extreme exercise of legislative power which will not be deduced from words of doubtful meaning."<sup>99</sup> Thus the intent of the legislature must be clear, or such an act will not be construed so as to affect causes of action already barred. The better approach would seem to be for the Missouri legislature to provide for the presumption of abandonment to arise before the expiration of any limitations period which is applicable to the type of claim or right involved. The problem of construing particular statutes of limitations is avoided, as are the innumerable challenges based upon fourteenth amendment rights. As for claims which are barred prior to the effective date of the Act, it would be advisable for the legislature to state whether these claims are to be subject to the Act and, if so, to set some definite parameters on how far back the claims should reach.<sup>100</sup>

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94. These statutes have been characterized as offers of action on condition that they be accepted within the time limit set by the statute. The time limit becomes a part of the right of action itself and limits both the remedy and the right. Once the set period of time elapses, the right is gone. 51 AM. JUR. 2d *Limitations of Actions* § 15 (1971).

95. *Atlantic Coast Line R.R. v. Burnette*, 239 U.S. 199 (1915); *Smith v. Eureka Pipe Line Co.*, 122 W. Va. 277, 8 S.E.2d 890 (1940).

96. See authorities cited note 85 *supra*.

97. *Rabin v. Krogsdale*, 346 S.W.2d 58, 60 (Mo. 1961).

98. *Rincon v. Rincon*, 571 S.W.2d 475, 476 (Mo. App., St. L. 1978).

99. *State v. Hall*, 358 S.W.2d 845, 851 (Mo. En Banc 1962).

100. The best approach would be to modify § 16 of the Uniform Act in order to render it ineffective as to property against which the statute of limitations has run prior to the effective date of the Act. Wisconsin has thus modified its statute. WIS. STAT. ANN. § 177.06 (West 1974).

### E. Conflicts With Federal Regulations

Another problem which has been encountered when enforcing the Uniform Act is that of priority in instances where a provision of the Act conflicts with federal regulations in the same area. In *United States v. Board of Commissioners*,<sup>101</sup> the Maryland Escheat Act was held inapplicable to the amount of the net estate of a veteran which was attributable to pension benefits paid by the Veterans Administration. The crucial issue in such cases is whether there is indeed a conflict between state law and federal regulations. For example, state statutes providing for escheat of property held by national banks were the subject of much controversy. National banks are not subject to regulation by a state to the extent that such regulation contravenes some federal legislation or hinders their performance as federal agencies. In *Anderson National Bank v. Lockett*,<sup>102</sup> which tested the validity of Kentucky's custodial-type legislation as applied to solvent national banks, the Supreme Court found no conflict between the legislation and any national law or purpose. As to national banks in the process of liquidation, however, the provision of the National Bank Act directing payment of unclaimed deposits to the shareholders or their legal representatives in proportion to the stock held by them does seem to present a conflict. The Supreme Court was presented with this question in *Roth v. Delano*,<sup>103</sup> but avoided the issue on the ground that the Michigan statute in question had since been repealed, and that to render a declaratory judgment subsequent thereto would be to "render an advisory opinion on the constitutionality of a repealed State act."<sup>104</sup>

Due to the apparent conflict with the National Bank Act, many states modified their statutes so as to render them inapplicable to national banks in the process of liquidation. Section six of the Uniform Act appears to adopt this approach, referring to the dissolution of bank organizations "organized under the laws of or created in this state."

### V. CONCLUSION

Despite the many problems which initially might be encountered in its enforcement, the Missouri legislature is strongly urged to adopt some comprehensive legislation in the area of escheat. Existing Missouri legislation is inadequate, and leaves a large amount of unclaimed property in the hands of private holders. Compliance with and enforcement of Missouri law is hampered by the disorganized condition of the current statutory compilation.<sup>105</sup> Revenue is being lost; property that could be

101. 432 F. Supp. 629 (D. Md. 1977).

102. 321 U.S. 233 (1944).

103. 338 U.S. 226 (1949).

104. *Id.* at 231.

105. For statutes relating to escheat, see RSMo § 136.010 (1978) (collection of money payable to the state); § 141.580 (1978) (escheat of excess funds from tax foreclosure sale); § 202.060 (1978) (escheat of funds in care of state mental health

claimed by the state of Missouri may be subject to escheat by other states due to the lack of an applicable escheat statute in Missouri. For example, any unclaimed property of a Missouri citizen who worked for a corporation whose domicile was in Iowa would be subject to escheat *only* by Missouri if Missouri had an applicable statute. Because Missouri does not have such a statute, Iowa is able to escheat the property at the expense of Missouri residents.<sup>106</sup> Although the decision of *Texas v. New Jersey* indicates that if Missouri should later enact an escheat provision subjecting such property to escheat it could recover this property from the state of Iowa, the typical approach of other states has been to expressly decline to do so.<sup>107</sup>

Another factor supporting the adoption of such legislation is that the property is taken only from those who are unjustly enriched by its abandonment. Companies which have underpaid employees, utility companies whose customers fail to recover their deposits, and life insurance companies which hold uncollected proceeds have no greater right to the benefits of the unclaimed funds than does any private citizen. Such resources should work for the benefit of all through the medium of the state government rather than for the person who holds them as a result of some fortuitous circumstance.

In a time of financial difficulty and increasing opposition to taxation, an act which would produce revenue without the imposition of a heavier burden on the taxpayer should be considered, and it is strongly urged that the Missouri legislature do so. The success of such statutes in other states indicates what results might be expected.

In its consideration of escheat legislation, the Uniform Act should be examined as a model. Necessary revisions to the Uniform Act would not create problems because the need for uniformity was greatly diminished by the decision in *Texas v. New Jersey*. The value of the Uniform Act lies in its provisions having been tested and in the case law which has been developed which explains its many provisions. Use of the Uniform Act in drafting escheat legislation is therefore recommended. But whether or not the Uniform Act fulfills the desires of the legislature, it should consider some type of legislation in the near future before still more revenue is lost.

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institutions when owner is unknown or unlocated); § 361.210 (1978) (unclaimed deposits of liquidated bank and trust companies); §§ 470.010-350 (1978) (decedents' estates and funds in the custody of courts); § 475.325 (1978) (escheat of estate upon nonacceptance by minor). See also RSMo ch. 447 (1978) (lost and unclaimed property).

106. See *Texas v. New Jersey*, 379 U.S. 674 (1965).

107. See, e.g., ARK. STAT. ANN. § 50-645 (1979); TENN. CODE ANN. § 64-2901 (Supp. 1979). The Uniform Act also has a provision to this effect. UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT § 27 (1966).